IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1490 OF 2006

Shri Mitesh Kishore Vithalani
Indian Inhabitant, aged about 40 yrs.
residing at 40, Ashok Nagar,
Bhujbhal Wadi, Ram Baugh, Lane No.2,
Kalyan (West) - 421 301. ... Petitioner
(Nephew of the Detenu)

V/s.

1. The State of Maharashtra

2. Shri A.N. Roy.
The Commissioner of Police,
Brihan Mumbai.

3. The Superintendent,
Thane Central Prison, Thane.

4. The Superintendent of
Nasik Road Central Prison,
Nasik. ... Respondents

Mrs. A.M.Z. Ansari for the petitioner.

Mr. D.S. Mhaispurkar, APP for the State.

CORAM : SMT. RANJANA DESAI &
ANOOP V. MOHTA,JJ.

DATED : 5th March, 2007.

ORAL JUDGMENT (PER SMT. RANJANA DESAI, J.) :-

. The petitioner is the nephew of one Mahesh Gokuldas Tanna ("the detenu", for convenience) who has been detained by the Commissioner of Police, Brihan

Mumbai (respondent 2 herein) under the order of detention dated 16th June 2006. The said order of detention is issued under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act,1981 (the said Act for short). The order of detention alongwith the grounds of detention and material in support thereof is served on the detenu on 17th June 2006 and the detenu was detained. In this petition the said order of detention is challenged.

2. The order of detention is based on one C.R. being C.R.No.106 of 2006 registered at Bhoiwada Police Station under Sections 387, 354 r/w. Section 34 of the Indian Penal Code. It is also based on two 'in camera' statements. In camera statement of Witness "A" is recorded on 10.5.2006, in which he has deposed about an incident in which the detenu was involved and which had taken place in the 1st week of March 2006. The statement of Witness "B" is recorded on 11.5.2006. in which he has deposed about an incident which had taken place in the 4th week of March 2006, in which the detenu was involved. The proposal for detention of the detenu was submitted by the sponsoring authority on 22nd May 2006 and after considering the material in support thereof, the detaining authority

issued the impugned order of detention.

3. We have heard, at some length, Mrs. Ansari, learned counsel appearing for the detenu. Mrs. Ansari assailed the impugned order of detention on four counts. She submitted that the grounds of detention are based on incidents which do not affect public order. In support of her submission, Mrs. Ansari relied on the judgment of the Supreme Court in **Darpan Kumar Sharma V/s. State of Tamil Nadu & Ors. 2003 SCC (Cri) 537** and judgment of this Court to which one of us (Mrs. Ranjana Desai,J.) is a party in **Austin William Luis Pinto V/s. Commissioner of Police, Gr. Mumbai & Ors. 2005 ALL MR (Cri) 28.** According to Mrs. Ansari, the said incidents at the most, involve breach of law and order but not breach of public order. Therefore, the detaining authority has wrongly included the said incidents in the grounds of detention.

4. Mrs. Ansari further submitted that the detaining authority ought to have applied his mind to the fact that in respect of the first incident an identification parade had taken place and, in that identification parade, two witnesses could not

identify the detenu. Mrs. Ansari submitted that this vital aspect ought to have been considered by the detaining authority and inasmuch as it has not been considered by him, the order of detention suffers from non-application of mind and must be set aside on that ground.

5. Mrs. Ansari further submitted that the order of detention is issued with a malafide intention. She submitted that on 4.5.2005, the detenu alongwith his associates had recorded video-tape of the corrupt officers of the Nasik Road Central Prison. The Superintendent of the Nasik Road Central Prison and the Jailor had requested the detenu not to telecast the recorded C.D. on the 'Red Alert' programme and offered him bribe. The detenu did not accept the bribe. The officers had threatened the detenu that they will ensure that he will go back to jail. The news report dated 22.6.2006 in connection with this incident is annexed to the petition. Mrs. Ansari contended that the officers were bearing a grudge against the detenu and therefore, they have falsely involved him.

6. Lastly, Mrs. Ansari contended that the detenu had addressed a representation to the Commissioner of

Police, Brihan Mumbai, dated 24th June 2006. That representation ought to have been considered by the detaining authority prior to the confirmation. Mrs. Ansari submitted that the order of detention was confirmed on 22nd June 2006 and the detenu was not informed about it. The learned counsel urged that on account of this infirmity, the detention order is liable to be set aside.

7. As against this, Mr. Mhaispurkar, learned APP submitted that the detenu is involved in extortion activities. He submitted that the first incident in respect of which C.R. is registered at Bhoiwada Police Station pertains to extortion. The statements of Witnesses 'A' and 'B' also reflect that the detenu is indulging in extortion. The said incidents squarely fall within the ambit of the term 'public order'. In support of this submission, the learned APP relied on the judgment of the Supreme Court in **Sharad Kumar Tyagi V/s. State of Uttar Pradesh and Ors. AIR 1989 SC 764** and the judgment of this Court to which one of us (Mrs. Ranjana Desai, J.) is a party, in **Mrs. Nakshatram Kanakraj Nadar V/s. Commissioner of Police & Anr. (2004) ALL MR (Cri) 3309** and another judgment of this Court in **Shri Raja @ Raju Namdev Kharade V/s. Shri V.D. Mishra & Ors.**

(2004) ALL MR (Cri.) 2148. Mr. Mhaispurkar also relied on judgment of the Supreme Court in **Amanulla Khan Kudeatalla Khan Pathan V/s. State of Gujarat & Ors. (1999) 5 SCC 613.**

8. The first incident is preceded by two incidents. On 27.3.2006 the detenu and his associates posing to be reporters of T.V. channel "Mera Bharat Samachar" had entered the complainant's beauty parlour with video camera and started video shooting. When the complainant questioned him, he asked him to phone him on his mobile number failing which, the detenu threatened, that the video graphed piece of work would be released on T.V. On 29.3.2006, when the complainant phoned him the detenue threatened him. Two days thereafter, the detenu questioned him and asked him why he had not brought the money. On 8.4.2006, the detenu and his associates again entered the complainant's beauty parlour and started video shooting. When the complainant objected the detenu caught hold of his employee Priyanka Sharma and asked her to give interview. Another employee one Aisha Shaikh tried to release the hands of Priyanka Mishra from the detenu's clutches. The detenu gave her a jerk. After completing the video shooting, the detenu and his associates left the beauty parlour.

The complainant then lodged his complaint with the police.

9. It was argued by Mrs. Ansari that this incident had taken place inside the beauty parlour. There is no material to show that any customers were present and, therefore, there is no question of public order being affected. We are unable to accept this submission. It is true that the incident had taken place inside the beauty parlour but the fact remains that the detenu wanted to extract money by giving threats that the C.D. of the beauty parlour would be released on T.V. Because of the detenu's activities, the workers present in the beauty parlour got scared. The nature of this incident is such that though it took place inside the beauty parlour it was likely to spread terror amongst the nearby shop owners and their employees. In our opinion therefore, this incident undoubtedly affects public order.

10. The statement of Witness 'A' also discloses a similar incident with which the detenu and his associates are concerned. The detenu and his associates had entered the beauty parlour of witness 'A' and told him that his business is illegal. They had threatened him that they would show the alleged

illegal activities which take place in the beauty parlour on the T.V. The detenu and his associates asked for money. The detenu took sum of Rs.5,000/- from witness ‘A’ and told him that the detenu should get the remaining amount or else, serious consequences will follow.

11. Similarly, in his statement witness ‘B’has stated that the detenu entered his lodge with a video camera and gave him similar threats after video shooting the lodge. The detenu had taken an amount of Rs.4,500/- from witness ‘B’ after threatening him that he would release the C.D. on T.V. From these incidents it does appear that the detenu has taken to the life of crimes and he is regularly indulging in extortion activities.

12. In **Sharad Kumar Tyagi’s case (Supra),** the petitioner therein had made demands for money and given threats to the contractors and shopkeepers. The Supreme Court held that it would not be possible to hold that those demands and threats would have its reach only to the limited extent of affecting the law and order situation and not go so far as to affect the maintenance of public order.

13. In **Amanulla's case (Supra),** the Supreme Court was dealing with the Gujarat Prevention of Anti Social Activities Act, 1985 which is similar to the said act. The grounds of detention disclosed that the detenu therein had formed a gang and had hatched a conspiracy to extort money from innocent citizens by threatening them. The Supreme Court held that there was no bar for taking these incidents into consideration by the detaining authority for arriving at its subjective satisfaction that the detenu is a dangerous person.

14. We may also usefully refer to the judgment of this Court in **Raja @ Raju's case (Supra)** where following the judgement in the **Sharad Kumar Tyagi's case (Supra),** this Court has taken same view. As regards extortion activities, reference may also be made to the judgment of this Court in **Mrs. Nakshatram's case (Supra)** where the same view is taken. In view of the above authoritative pronouncements of the Supreme Court and of this Court, we have no manner of doubt that the detenu is involved in activities which are prejudicial to the maintaining of public order. The first submission of Mrs. Ansari must therefore failed.

15. We are also not impressed by Mrs. Ansari's

submission that the order of detention is malafide because it is the result of the video recording done by the detenu and his associates of the alleged activities of the corrupt officers and staff of the Nasik Road Central Prison. The detaining authority has in its affidavit clearly stated that he has issued the order of detention on the basis of the material placed before him and the order of detention has nothing to do with the earlier incident about the alleged sting operation carried out by the detenu at the Nasik Road Central Prison. We have no reason to dis-believe the detaining authority.

16. Mrs. Ansari also argued that the counter complaint filed by the detenu at the Bhoiwada Police Station is a vital and material document, it pertains to the alleged illegal affidavits carried out at the Eye Max beauty parlour in respect of which first case was registered. Mrs. Ansari contended that this document ought to have been placed before the detaining authority.

17. We have seen this complaint. It is a printed format in which blanks have been filled in. In our opinion, the detaining authority has rightly stated in his affidavit that this document cannot be called a

vital and material document which could have influenced his mind one way or the other. In our opinion all the vital and material documents which have a direct bearing on the need to issue the detention order against the detenu have been considered by the detaining authority. Non placing of the cross complaint before the detaining authority therefore does not vitiate the order of detention.

18. Mrs. Ansari also contended that in the identification parade two witnesses did not identify the detenu. According to her this fact ought to have been taken into consideration by the detaining authority. We have gone through the affidavit of the detaining authority. We find from the affidavit that this aspect was present in the mind of the detaining authority when he issued the detention order. The detaining authority has clearly stated that he was aware that two witnesses viz. Priyanka and Aiyesha did not identify the detenu and his associates. However, other two witnesses had identified them. What is the effect of the detenu not being identified by the two witnesses will be decided in the trial.

19. So far as the impugned order of detention is

concerned, we are satisfied that while issuing the same, the detaining authority has applied his mind to the fact that two witnesses had not identified the detenu and his associates. Having applied his mind to this vital aspect, the detaining authority has passed the impugned order of detention. The order of detention therefore cannot be set aside on the ground that the detaining authority had failed to consider the fact that two witnesses did not identify the detenu. This submission of Mrs. Ansari must therefore, fail.

20. Mrs. Ansari also made a grievance that confirmation order was not communicated to the detenu. This submission must also be rejected. In **Deb Sadhan Roy V/s. State of West Bangal (1972) 1 SCC 308,** the Supreme Court has held that the effect of non communication of order of confirmation may be an irregularity which does not make the detention otherwise legal, illegal. In any case, in this case, the detention of the detenu was confirmed on 2nd June 2006. The detenu’s representation is dated 24th June 2006. Therefore, in the interest of justice, the representation could not have been considered prior to the confirmation of the detention order. This submission of Mrs. Ansari must also be rejected.

21. In the circumstances, we are of the opinion that no case is made out for interference with the impugned detention order. It is perfectly legal and justified. The petition is therefore dismissed.

[SMT. RANJANA DESAI,J.]

[ANOOP V. MOHTA,J.]